(1)

Supreme Court, U.S.

No. 041234 MAR 11 2005

In The

Supreme Court of the United States

Renee S. Thurlow,

Petitioner,

v.

United States of America, et al.

Respondents.

On Petition For Writ of Certiorari
To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Renee S. Thurlow
Petitioner pro se
53075 Barberry Circle
Chesterfield, MI 48051
(586) 749-4942

QUESTIONS PRESENTED FOR REVIEW

I. Whether Petitioner's case presents a federal question challenge against the constitutionality of the "***incident to service***" holding under the provisions of the ***Feres*** doctrine, ***Feres v. United States***, 340 U.S. 135 (1950), wherein "***gross/criminal***" negligent acts and omissions of federal employees cannot be exempted under the ***Federal Tort Claims Act (FTCA)***, 28 U.S.C. 1346 et seq., based upon any of the rationale for the ***Feres*** doctrine to remain the law of the land?

II. Whether the doctrine established under the ***Feres*** Court's "***incident to service***" holding, has unlawfully obstructed Petitioner's ***First Amendment*** Right under ***The United States Constitution*** and statutory right under the ***FTCA*** to petition the federal courts to redress the wrongful death of her son, Marine Corps Recruit Justin Haase, arising from Respondent's "***gross/criminal***" negligent acts or omissions?

III. Whether the good faith intent of the ***Feres*** doctrine's "***incident to service***" bar under the ***FTCA*** established primarily to maintain "good order and discipline" in the military, has been so manipulated and misinterpreted over the past 54 years, barring even criminal acts or omissions from redress under the ***FTCA,*** such as the wrongful death of Justin Haase, compels this Court to overturn or reform the ***Feres*** doctrine to restore integrity within the federal courts?

IV. Whether the Federal District Court's strong reluctance to dismiss the Complaint for lack of subject matter jurisdiction under the provisions of the ***FTCA***, based

the egregious facts and circumstances surrounding Justin's death, demands this Court to revisit the constitutionality and purpose of the ***Feres*** doctrine?

V. Whether Petitioner's wrongful death claim must be remanded to the District Court to establish new precedent and subject matter jurisdiction to address "***gross/criminal***" negligence under the provisions of the ***FTCA***, to prevent unnecessary injuries or death arising from medical malpractice outside the scope of combat and to restore "checks and balances" on power in the United States Armed Forces?

VI. If this Court is unwilling to remedy the ***Feres*** doctrine injustice, as the Guardian of ***The United States Constitution*** and in the name of justice, is this Court obligated to compel the United States Armed Forces to provide Recruits "***informed consent***" or the "***right to know***" the ***Feres*** doctrine strips and prohibits them from equal protection of the ***American Constitution*** once they assume their military oaths?

VII. If this Court denies issuance of writ of certiorari in this case based upon Respondent, United States of America's sovereign immunity status, is there any final United States authority Petitioner should address before seeking to hold "individual" Respondents accountable for the wrongful death of her son, Justin, at the United Nations (UN), Organization of American States (OAS), or International Criminal Court (ICC)?

LIST OF PARTIES

The list of parties to this proceeding arising from the final decision before the Sixth Circuit Court of Appeals include the following:

a. Petitioner Renee S. Thurlow, Personal Representative of the Estate of Justin Haase, deceased; and

b. Respondents The United States of America, The Department of the Navy, Sergeant William R. Bilenski, Sergeant Dwayne A. Hardwick, Hospitalman Sean O. Audain, and Lieutenant Commander Lloyd D. Weddington.

No Corporate disclosure statement under Rule 29.6 is necessary as Petitioner is a private Citizen of the United States of America proceeding pro se.

BASIS FOR JURISDICTION

Petitioner believes ***The United States Constitution*** and its ***First Amendment*** confers jurisdiction upon this Court to review this petition for writ of certiorari in addition to 28 U.S.C. § 1254(1), arising from a final judgment of the United States Court of Appeals for the Sixth Circuit filed on December 13, 2004.

Petitioner believes this case presents a federal question challenge against the judicially created ***Feres*** doctrine, ***Feres v. United States***, 340 U.S. 135 (1950), and is of such imperative public importance as to justify this Court's issuance of writ of certiorari.

STATEMENT OF THE CASE

This case arises from a final judgment of the United States Court of Appeals for the Sixth Circuit filed on December 13, 2004. Petitioner affirmatively asserts the judicially created ***Feres*** doctrine established in ***Feres v. United States***, 340 U.S. 135 (1950), on December 4, 1950, and its "***incident to service***" holding, has denied her equal protection and justice under ***The United States Constitution*** and ***The Federal Tort Claims Act (FTCA), 28 U.S.C. 1346 et seq.***, to redress the wrongful death of her son, Marine Corps Recruit Justin Haase. Petitioner asks this Court to declare the "***incident to service***" bar on judicial redress of "***gross/criminal***" negligent acts or omissions of federal government employees resulting in injury or death to a service member unconstitutional.

On August 24, 2001, Petitioner's son Justin enlisted in the United States Marine Corps (USMC) delayed entry program. On September 11, 2001, (9/11), after learning of the infamous attacks against the United States of America, Justin immediately proceeded to the USMC recruiting office to expedite his processing onto Initial Active Duty for Training (IADT). On October 29, 2001, Justin reported for IADT to USMC basic training to fight for his Country in what we now know as the Global War on International Terrorism ("War on Terror") having *no* knowledge he was stripped of all inalienable protections of ***The United States Constitution*** due to the "***incident to service***" bar under the provisions of the ***Feres*** doctrine's grant of sovereign immunity. Hence, Petitioner filed her Complaint to assert these facts, in addition to the fact the ***Feres*** doctrine removes "checks and balances" on power in the United States military, is the direct and proximate cause giving rise to Justin's wrongful death on December 23, 2001.

Unfortunately, Petitioner's Complaint was dismissed on December 13, 2004 by the Sixth Circuit Court of Appeals based upon the shocking decision she had no "subject matter jurisdiction" under the ***FTCA*** to petition the United States Government for redress of her son's wrongful death under the ***First Amendment*** of ***The United States Constitution***. This fact in of itself warrants the ***Feres*** doctrine to be declared unconstitutional. Nevertheless, Petitioner's case brings new federal question challenges for this Court to revisit the ***Feres*** doctrine to establish new case law to ensure "***gross/criminal***" negligent acts or omissions of federal employees arising "***incident to service***" in the military and leading to unnecessary injury or death of American service members, *cannot* be dismissed under a "doctrine" that is justified by false assertions its rationale barring such claims as Petitioner's under the ***FTCA*** is both good for American national security and for the preservation of good order and discipline in the United States Armed Forces.[1]

In sum, Petitioner brings this case before this Court and affirmatively asserts her right to equal justice under law and protection of ***The United States Constitution*** and ***FTCA*** to redress Justins's wrongful death arising incident to military service has been illegally obstructed by the ***Feres*** doctrine.

---

[1] Petitioner does not challenge the ***FTCA's*** exemption for injuries or death arising "incident to combat" nor does she seek to open the courthouse doors for claims of "negligence" per se, arising incident to military service. Petitioner's Complaint was filed to address the "***gross/criminal***" negligent acts and omissions of Respondents leading to Justin's egregious and horrific death. Petitioner seeks to restore "individual accountability" and **not** to disrupt good order and discipline in the United States Armed Forces. The death of Petitioner's son in no way can be denied redress in the federals court's based upon the ***Feres*** doctrine rationales.

This "doctrine" has been so grossly manipulated over the past 54 years since its induction as the law of the land, it is simply a damage control tool to silence and cover up human and constitutional right abuses within the military's command, legal and medical systems to conceal blatant criminal acts and obstruction of justice without the call for accountability. This is contrary to the preservation of national security and good order and discipline in the military, thus supporting Petitioner's request for the ***Feres*** doctrine's "***incident to service***" bar on "***gross/criminal***" negligent acts to be overturned. Petitioner reasonably believes, if the Respondents knew their acts and inactions would be actionable under the provisions of the ***FTCA***, her son might be alive today.

In essence, the ***Feres*** doctrine's absolute bar under the ***FTCA*** within the federal courts' and its failure to ensure "checks and balances" on military power, breeds human and constitutional rights abuses having no legitimate military purpose or necessity. This must end and it is apparent from District Court Judge Bernard A. Friedman's reluctance to dismiss the Complaint based upon lack of subject matter jurisdiction carries great weight for this Court to revisit and the constitutionality of the ***Feres*** doctrine's "***incident to service***" bar under the ***FTCA***, to prevent "***gross/criminal***" negligent acts or omissions from injuring or killing American service members in the future.

Petitioner deserves writ of certiorari in this case to be granted.

Concise Argument In Support Of
Petitioner's Questions Presented For Review

Petitioner believes the facts and circumstances leading to her son Justin's wrongful death present a new federal question challenge against the constitutionality of the judicially created ***Feres*** doctrine, ***Feres v. United States***, 340 U.S. 135 (1950), and its "***incident to service***" bar exemption under ***The Federal Tort Claims Act (FTCA), 28 U.S.C. 1346 et seq.***, and is of such imperative public importance as to justify this Court's issuance of writ of certiorari.

Petitioner affirmatively argues, the 1950 Supreme Court overstepped its constitutional bounds when it created judicial legislation via its "***incident to service***" holding under the ***Feres*** doctrine. Petitioner argues the judicial exemption established via the "***incident to service***" holding was not intended by the United States Congress to dismiss criminal activity resulting in injury or death to service members. Moreover, Petitioner argues the "***incident to service***" holding under the ***Feres*** doctrine directly violates ***The United States Constitution's*** "separation of powers" clause (***U.S. Const. Art. I, sec 8***); her right to petition the Government for redress of her son's wrongful death under the ***First Amendment (U.S. Const. Amend 1)*** and the ***FTCA, 28 U.S.C. 1346 et seq.***, the "supremacy clause" ***(U.S. Const. Art. VI, clause 2).*** For these reasons alone, this Court must declare the ***Feres*** doctrine unconstitutional.

Nevertheless, the injustices of the past of 54 years of ***Feres*** doctrine rule of law cannot be changed nor will it be changed by the United States Congress as it is abundantly clear, they do not intend to remedy the doctrine as this Court well knows, hence, it is now the time for this Court to remedy its own created ***Feres*** doctrine injustice.

Petitioner argues indeed the ***Feres*** Court grossly misinterpreted the ***FTCA's*** Congressional intent by barring service members from absolute recovery. The statement of the Author of the ***FTCA*** itself, namely, Representative Emmanuel Cellar (D-NY) supports this fact. As the facts do show, one year before the ***Feres*** doctrine's "***incident to service***" bar was judicially established, he stated in 1949; he never intended to preclude a suit by a military member when drafting the Act. (emphasis added).[2] Thus, Petitioner asserts, based upon the reasonable person theory in American jurisprudence and combining Congressman Cellar's statement with the compelling dissenting opinion of Justice Scalia re; ***United States v. Johnson***, (1987), that the ***Feres*** doctrine was "***wrongly decided***" and the "***incident to service***" bar under the ***FTCA*** upheld by a slim margin and vote of only a 5-4 bar. A "negligence" claim arising from a (civilian) federal employees acts or omissions, most definitely calls for this Court to address the ***Feres*** doctrine's absolute judicial bar under the ***FTCA*** in this case wherein "***gross/criminal***" negligent acts and omission leading to the "untimely demise" as cited by the Sixth Circuit of Respondents son, cannot be dismissed based upon lack of subject matter jurisdiction. This in of itself is a crime and betrayal of all American service members and their families.[3]

---

[2] ***The Military and the Federal Judiciary: an Unexplored Part of the Civil-Military Relations Triangle*** by Michael H. Gilbert.

[3] Petitioner would like to reiterate, her constitutional challenge against the ***Feres*** doctrine is not intended to open the Courthouse doors to suits arising from negligence or incident to combat. However, Petitioner strongly argues, injuries or death arising from "***gross/criminal***" negligent acts or omissions of federal employees cannot be dismissed by the federal judiciary.

In ***United States v. Johnson***, Respondent Johnson did not ask this Court to overrule the ***Feres*** doctrine. Petitioner now does.

In addition to the above arguments wherein Petitioner believes she has made the case the ***Feres*** doctrine was wrongly decided and the ***FTCA*** misinterpreted by the 1950 Supreme Court, Petitioner believes the most compelling statement made in this entire case to merit this Court's issuance of writ, is predicated upon the reluctance of District Court Bernard A. Friedman and his comments: ***"If I had equity jurisdiction, it screams, it screams and screams. It's not fair. There's no question about that."*** (Append. Def. Mot. To Dismiss Proceedings, Wednesday, December 17, 2003, Pg. 3, lines 6-8). In Response, Petitioner's then-attorney, Mr. Lee Wulfmeier stated to the Court: ***"You could start a new precedent today. Instead of Feres we could have Haase, your Honor, a new case."*** (Append. Pg. 5, Lines 12-14). The Court responded: ***"I wish I could. As I say, I took an oath, and the oath was to follow the law."*** (Append. Pg. 5, Lines 15-16).

In sum, Petitioner once again affirmatively argues ***The United States Constitution*** and not the ***Feres*** doctrine is the "law" of the land. It is time for this Court to overturn the "***incident to service***" bar of the ***Feres*** doctrine to all the lower courts to administer justice arising from issues incident to military service that have no bearing on national security or the preservation of good order and discipline based upon the ***Constitution*** and not the ***Feres*** doctrine. Petitioner asserts the ***Feres*** doctrine "obstructs justice" within the federal judiciary and for this reason alone, the doctrine must be declared unconstitutional.

Petitioner argues if the judicially created ***Feres*** doctrine is justified as essential law by the American Government to preserve national security and good order and discipline in

the United States Armed Forces, why then, are military recruits such as her son Justin not being provided "***informed consent***" and the "***right to know***" the ***Feres*** doctrine's prohibits and strips them of equal protection and justice under the very same ***United States Constitution*** they have sworn to protect and serve? Petitioner cannot bring back her son, however, she is asking this Court to do the right thing and remand her case to the District Court to establish the ***Haase*** doctrine to replace the ***Feres*** doctrine to restore "checks and balances" on power in the United States military, while balancing the human and constitutional rights of individual service members and the genuine need to protect national security by limited access to the federal courts arising from cases predicated upon egregious "***gross/criminal***" negligent acts and omissions such as those that led to Petitioner's son's wrongful death.[4]

Petitioner argues the United States Supreme Court "***Feres*** doctrine" decision allows United States federal government employees to engage in human and civil rights abuses in violation of ***The United States Constitution*** and ***International Law*** specifically established at Nuremberg at the conclusion of World War II.

What is most disturbing about the ***Feres*** doctrine decision is the fact that its author, Associate Supreme Court Justice Robert H. Jackson was the Chief Prosecutor appointed by President Harry S. Truman to lead the Nuremberg Tribunal. Thus, Petitioner believes there is no possible way Justice Jackson's ***Feres*** decision could have

---

[4]The ***Haase*** doctrine would continue to bar lawsuits arising from negligence or matters arising incident to combat. In addition, the Haase doctrine would provide both "***informed consent***" and a "***right to know***" provisions to inform potential military recruits the actual meaning of the relationship of the "federally distinctive in nature" status between the Government and members of its armed forces.

been intended to dismiss blatant human and constitutional rights abuses under his "***incident to service***" holding which is in contradiction to his prosecuting similar crimes at Nuremberg.[5]

In Conclusion, Petitioner argues ***The United States Constitution*** is the supreme law of the land governing the United States Armed Forces, not the ***Feres*** doctrine. Hence the draconian ***Feres*** doctrine must be abolished or at the very least, reformed.

Petitioner reasonably believes, her constitutional challenge against the ***Feres*** doctrine arising from the wrongful death of her son Justin and predicated upon "***gross/criminal***" wrongful acts and omissions of Respondents provides new federal question challenges for this Court to revisit the constitutionality of the ***Feres*** doctrine. Please issue writ of certiorari.

Respectfully submitted,

Renee S. Thurlow

Renee S. Thurlow
Plaintiff, pro se

Dated: March 10, 2005

---

[5] The abomination known as the ***Feres*** doctrine and the crimes arising incident to service leading to wrongful deaths such as Justin's and or injuries of service members arising from the wrongful acts or omissions of federal employees that are being dismissed in the federal courts based upon "lack of subject matter jurisdiction" under ***Feres***, can only be summed up by Justice Robert H. Jackson's own statement at Nuremberg: ***"the wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated."***